IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 401 of 2006

SHANTI LAL
V/S
PRAKASH GANDHI

Mr. ARUN BHANSALI, for the appellant / petitioner

Date of Order : 7.11.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

The suit has been filed for eviction on various grounds including default, subletting, bonafide necessity, etc., but then it has been decreed by both the learned Courts below only on the ground that the shop in question has become dilapidated and unfit for human habitation. It has been found that the roof of the shop is made of wood, earth and bricks. It has also been found by both the learned Courts below that the wooden part of the roof has been damaged by termites, and the filling earth in between the bricks has already given way. Obviously therefore, it is required to be comprehended, that the roof is to fall down. Admittedly, the shop is said to be more than 60 years old, and had not undergone any repairs.

Thus, the finding recorded by the learned Court below on the question is a pure finding of fact, and in my view, is not vitiated on any of the grounds available under

Section 100 CPC.

The appeal is, therefore, dismissed summarily.

However, at the request of the learned counsel, the appellant is given one year's time to vacate the suit premises on the condition that the defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decretal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today and shall further continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA),J.

/Sushil/